FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 578/2006

Appeal	District :
Application No.	of 200
Writ petition	

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : February 26, 2007.

Heard Shri M.V. Samarth for the appellants.

By this appeal, the appellants challenge the order passed by the 4th Ad hoc Additional District Judge, Bhandara, on 20/10/2005, decreeing the suit filed by the plaintiff/respondent with costs.

A suit was filed by the respondent/plaintiff for permanent and mandatory injunction directing the defendants to remove the obstructions on the suit site as also restraining the defendants from obstructing the right of way of the plaintiff over the suit site.

The predecessors-in-title of the plaintiff were the owners of Gat No. 35/1, whereas the predecessors-in-title of the defendants were the owners of Gat No. 35/2. According to the plaintiff, the predecessors-in-title of the defendants had executed a *Dan Patra* on 19/1/1983 in favour of the Gram Panchayat governing certain land for the purpose of carving out a public road. It is the case of the plaintiff that the road on the land donated by the predecessors-in-title of the defendants, is used as public road for more than 25

years. The plaintiff had erected an iron gate to the western portion of his plot and was using the same for ingress and egress through his property to the public road. According to the plaintiff, since the defendants had obstructed the user of the aforesaid land by the plaintiff, the plaintiff filed a suit seeking the aforesaid relief.

The defendants filed their written statement and denied the claim of the plaintiff. According to the defendants, the land was not donated to the Gram Panchayat for the purpose of construction of road and the story of the road was imaginary. According to the defendants, the strip of land was kept by them for their own use. The defendants, in turn, claim to be the owners of the suit land.

The trial Court dismissed the suit of the plaintiff holding that the plaintiff had failed to prove his right of way on the suit property. It was further held that the plaintiff had failed to prove that the defendants obstructed his right of way by placing a thorny fencing on the suit land. Consequently, the claim of the plaintiff for grant of temporary injunction and permanent injunction was rejected.

In an appeal filed by the plaintiff against the judgment and decree passed by the trial Court on 17/2/2004, the appellate Court reversed the findings recorded by the trial Court and decreed the suit of the plaintiff. The appellate Court observed that though the *Dan Patra* was not admissible in evidence as it was not registered, the Courts were entitled to consider the

contents of the same for collateral purpose. The appellant Court believed the evidence of the plaintiff and his witnesses for the proving the case of the plaintiff that the suit property was being used by the villagers as a public road and the property was gifted by the defendants to the Gram Panchayat for construction of the road. The appellate Court observed that though the defendants had stated that the land was not gifted to the Gram Panchayat and that there was a strip of land between road and the western wall of the plaintiff's house, the defendants failed to prove the aforesaid case. The appellate Court rightly considered the effect of the defendant no.1 not entering into the witness box to substantiate the pleadings in the written statement. The Court further held that the record clearly shows the existence of the road in front of the western gate of the plaintiff. The Court further considered the location of the gate on the western wall of the plaintiff's house to discard the statements made on behalf of the defendants that a strip of land in between the road and the house of the plaintiff belonged to the defendants. The defendants had canvassed that the land allotted to the Gram Panchayat for the purpose of road was only 15' in width and the document exh. 112 shows that the land in between western wall of the house of the plaintiff and the defendants' land was ranging from 10.6 feet to 19.6 feet, and hence the case of the plaintiff was not proved. However, it was not accepted by the appellate Court. The plaintiff had placed overwhelming evidence

on record to substantiate his case, whereas the defendant no.1 failed to enter the witness box to prove the pleadings in the written statement.

On the appreciation of the evidence tendered by the parties on record, the appellate Court has rightly reversed the findings recorded by the trial Court. Since the findings recorded by the appellant Court do not give rise to any substantial question of law, second appeal is dismissed with no order as to costs.

JUDGE

RMP